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SUBJECT: GOVERNMENT OF SUDAN DEMARCHES ASSISTANT SECRETARY
ON ICC ACTIONS

11. This is not an action request.

SUMMARY

12. A Government of Sudan (GOS) demarche to the United States Government (USG) on GOS reactions to the International Criminal Court's (ICC) decision to arrest the President of Sudan, Omer Al Bashir, on charges that he directed a campaign of mass murder, rape and pillage against civilians in Darfur, was delivered to Acting Assistant Secretary (A/S) for African Affairs on Thursday, March 5 at 1530 hours. The demarche stated that the GOS rejects ICC decision and strongly condemns it on the grounds that the Republic of Sudan is not a member of the ICC, does not come under ICC jurisdiction and is not subject to ICC rulings. The demarche argued that the ICC decision is political and could lead to several negative consequences for peace in Darfur and in Sudan as a whole. The GOS stated even though existing arrangements might be affected, it intends to abide by its obligations under the Geneva convention. The GOS appealed to peace loving nations to assist in suspending the arrest warrants, and requested a clear statement of the USG position with regard to the ICC actions.

On behalf of the USG, Acting A/S for the African Affairs Bureau of the State Department, Phil Carter, stated that the US is not a member of the ICC, but sees no need for a deferral of the ICC actions at this time. Carter noted that while the crimes of Darfur must be addressed, the USG hopes to look beyond the ICC actions to focus on areas of common concern such as the CPA and the Darfur peace process. In this context, Carter demanded that the decision to expel 13 NGOs from Darfur be reversed or frozen, and informed the emissaries that a political inertia is developing, which will constrain the space for bilateral negotiations, if the GOS does not immediately reconsider its expulsion actions. The A/S remarked that the GOS actions negatively impact a current review of US/Sudan relations. Carter rejected a GOS request for a Washington visit by Foreign Minister (FM) Deng Alor and Presidential Advisor (PA) Mustafa Ismael, on the grounds that meaningful dialogue will only be possible if the expulsions are withdrawn. The Sudanese agreed to relay the A/S's points to Khartoum and provide an immediate response.

SUDANESE DEMARCHE POINTS

13. The GOS rejects the ICC decision and strongly condemns it. Sudan is not a member of the ICC, does not come under its jurisdiction and is not subject to its rulings. The GOS rejects the ICC decision on the grounds that the decision is

political.

The decision is political for the following reasons:

- a. UNSC, which created the ICC, is a political body;
- b. The decision to refer the matter to the ICC was done by the UNSC, which is a political organ; c. The Prosecutor, having requested an indictment from the ICC, traveled the world to convince others to support his request; and d. The ICC is focusing on Africa; there are no other continents where similar actions with regard to Human Rights are being taken.

¶4. The ICC actions gives rise and will give rise to several consequences:

- a. It will prolong the conflict and not bring about peace; the ICC should be focused on peace;
- b. It attempts to deal with accountability but peace should be the priority and accountability next - especially in view of the Sudanese experiences with the CPA;
- c. The Justice and Equality Movement (JEM) announced yesterday that it has declined to continue the peace process in Doha/Qatar - the ICC actions sent the wrong message. Note: On February 17, the Government of National Unity (GNU - which is led by the GOS) and the Darfur rebel group JEM signed an "Agreement of Goodwill and Confidence Building for the Settlement of the Problem of Darfur" in Doha, Qatar. The agreement is seen as an important step in the renewed Darfur peace process. End Note.

¶5. The implementation of existing agreements may be affected by the ICC actions, but the GOS is committed to implementing its current agreements and protecting all diplomatic and International staff in the country as per the obligations under the Geneva convention. The GOS will continue to search for peace in Sudan ;the GOS believes that this is in the best interest of the people of Darfur and Sudan. The GOS invites all peace-loving countries that have already expressed a desire to bring about peace and suspend the indictment of President Bashir to continue to seek the withdrawal of the Darfur case from the ICC;

¶6. The GOS desires to know the US official position with regard to the ICC decision and a clarification of the various statements bade on behalf of the USG. The GOS requests that FM Deng Alor and Presidential Advisor Mustapha Ishmael visit the US as soon as possible to discuss the ICC related events and the way forward.

USG RESPONSE

¶7. Acting A/S Carter responded that:

- a. The ICC arrest warrant has been on the forefront of USG/GOS bilateral relations for some time, and the USG has consistently stated that both governments need to look beyond the ICC actions to focus on the areas of common concern such as the CPA and the Darfur peace process;
- b. The issues of crimes/impunities in Darfur need to be addressed, but we must look beyond this to continue to engage. For those involved in these crimes justice must be done. The USG hopes that the GOS responds positively to the ICC concerns;
- c. The US is not a member of the ICC. The USG sees no need for a deferral at this time.
- d. The Doha peace process must be made more inclusive; the USG seeks to engage the GOS on Darfur regardless of ICC issues. In this context, this has been a very bad day for our relationship and efforts to maintain flexibility on the areas of concern between the USG and the GOS;

e. The USG has contacted the Justice and Equality Movement (JEM) and expressed its concern about JEM comments on March 4; JEM states that they cannot return to the negotiating table unless genuine progress is made in the release of prisoners, which was agreed to in Doha. The USG told JEM in no uncertain terms to eschew violence, sit at the negotiating table and not sit behind a Kalashnikov; JEM agreed to return to Doha after the release of prisoners.

f. The USG is trying to get maximum leverage to make the peace process work, but the actions of the GOS in expelling 13 NGOs from Darfur is perplexing, contradictory to its own interests and seriously constrains the space for us to work in going forward on Darfur. These NGOs, such as CARE, OXFAM, IRC, with sterling reputations in the field of humanitarian assistance and the alleviation of suffering were delivering critically needed services to the people of Darfur, and the consequences of this action, if not immediately reversed, will be difficult for both the USG and the GOS;

g. The expulsion of the NGOs is being seen around the world as a punitive act, in retaliation for the ICC actions. This response by the GOS is frustrating, as it will limit the Darfur resolution, negatively impact the Doha peace process and bring acute suffering to the people of Darfur. Beyond Darfur this action will negatively impact the ability of the NGOs to operate elsewhere in the Sudan, and the delivery of services will be irrevocably diminished. The humanitarian organizations must remain in place in Darfur. This action neither helps the GOS and the USG to find common ground to solve the suffering in Darfur nor does it stabilize the situation between Sudan and Chad. It is a perplexing, disturbing action which is difficult to understand. The USG urges the GOS to reconsider this action immediately, as there is a political inertia developing for a harsh response, and the consequences will be irrevocable if the expulsion orders are not withdrawn;

h. The GOS responses to the ICC actions are not the restrained responses the USG thought it had negotiated with the GOS. It is important to note that the USG is in the process of a policy review with regard to the Sudan, and these actions negatively impact that review.

GOS ACCUSES NGOS OF FAILED MANDATES

18. Ambassador Khoc informed the A/S that all Sudanese are concerned about the displaced persons who are helped by the NGOs, but the GOS is constrained to act this way because the NGOs have admitted to passing information to the ICC and were clearly not sticking to their mandate, thus abrogating the arrangements under which they were allowed to operate. Ambassador Salah, DCM, elaborated that there are 19 American NGOs in the Sudan and only four were being expelled, because their mandates should not include communications with the ICC as this is political work.

19. Acting A/S Carter explained that there is no evidence that the NGOs admitted to anything, but an argument that they were not fulfilling their mandate is unacceptable, as the organizations were not hiding anything, were not involved in any new political activity, and any reporting on humanitarian conditions cannot be considered as politics. He reminded the Ambassador that to argue now -- 5-6 years later -- that the NGOs were talking to the ICC and expel them on these grounds is specious, punitive and unacceptable.

FINAL REMARKS AND ARRANGEMENTS

10. Acting A/S Carter made the following concluding remarks:

a. If the expulsions are implemented it will have

definite implications for the character and content of our bilateral relations with the GOS and the processes related to Darfur;

b. The Sudanese request for a visit by Foreign Minister Deng Alor and Special Advisor to the President of Sudan Mustapha Ishmael is only meaningful and possible if the expulsions are withdrawn or frozen in place until direct dialogue can be achieved.

c. We cannot press JEM to move forward on the next round of Doha talks until the prisoner exchange is conducted as agreed. Once this exchange occurs the USG can help bring JEM back to the negotiating table in Doha.

¶10. The Sudanese agreed to relay these points back to Khartoum and to provide an immediate response.

¶11. Acting A/S Carter will call Presidential Adviser Nafie on March 6 for further discussions.

CLINTON